

BASEMENTS: PUBLICATIONS PLANNING POLICY: JULY 2013

COMMENTS BY THE KENSINGTON SOCIETY

Preamble

Current policy: not fit for purpose:

The current policy is nearly 5 years old and has not proved to be fit for purpose given the extreme pressures for this type of development. These pressures are primarily driven by financial considerations, with a high proportion of applications being speculative investments rather than based the needs of a householder.

By definition, very few houses are occupied during the construction phase, which may take two or even three years, which indicates that for many applicants it is not their primary residence. Indeed many, when completed are not used as primary residences, indeed many are subsequently left empty for the majority of the year. The main motivation is not to live in the house as their primary residence, but to sink additional money into the property to maximise the resale value. For those who are non-resident or where the property is owned by an off-shore company, the resulting gains do not attract capital gains tax. These developments are seen as a major tax-free investment vehicle rather than as a house.

The need for limits:

The 2010 Core Strategy is silent on the extent of site coverage of basements – neither the reasoned justification nor the policy CL2 (g) mention this issue – yet this has been one of the key issues with basement applications. The guidance in the SPD on Subterranean Development suggests that basements should not exceed 85% of the garden. There was no evidence base for the choice of this figure – it was an invented rule of thumb. This “85% rule”, however, has produced a sense of entitlement by applicants/developers who see any maximum as a minimum entitlement. Whereas it should have been a maximum and the starting point for assessment of each case, in practice it has inhibited planning officers from negotiating a reduction in site coverage based on the need for better site drainage or resulted in their unwillingness to secure SUDS, retain trees or secure the retention of garden space.

There has been huge pressure from residents over the last 5 years to secure better management of the construction process, especially the issue of the number of heavy lorry movements to remove demolition and excavation waste, and the off-site storage of skips, materials and equipment. The former is a direct function of the scale of the basements proposed – **the Society, therefore, strongly supports the Council’s proposal to limit the scale of basements, in**

terms of site coverage, depth and having no basements under or in the garden of listed buildings.

The Society considers that the Council's proposals are sound, except for:

- **the proposal to permit basements under half of the garden of buildings that are not listed (CL7 (a)); and**
- **the definition of an existing basement (Para 34.3.46)**

Managing the process

The impact of basement developments that relate to the impact of development process is related to scale of developments and the way the process is managed.

Although the SPD on Transport seeks to minimise the use of the highway (road and footway) for "storage" through a presumption in favour of putting these off-street wherever possible, this has proved ineffective in most cases. This will only be solved by the draft construction traffic management plans being an integral part of the application, subject to public scrutiny like the rest of the application documents.

There has also been considerable concern about the noise, vibration and dust created by the construction process. The Society advocates a more integrated approach to managing the development process, with the "heads of terms" of any agreement on environmental nuisance and working hours under the environmental legislation also being part of the documents required for assessing the development proposals.

The Society proposes that there should be an additional policy to:

- resist storing skips, materials and plant on the highway wherever possible; and
- require a construction traffic management plan and a draft agreement limiting working hours and levels of noise, vibration and dust generated by the development.

Proposed Policy

The proposed policy is a considerable improvement on the Core Strategy Policy CL2 (g) whose four points barely addressed the main issues now being attempted by the new Policy CL7. The current policy CL2 (g) is allegedly supported by an SPD on Subterranean Development (2009), but the latter neither elaborates nor explains the Core Strategy as it pre-dated it by more than a year. Many of the criteria, such as the 85% coverage maximum "rule", therefore have no policy status, yet have been used for nearly five years and interpreted by both applicants and planning officers as minimum expectations.

The new policy, therefore, provides a real opportunity not only to put the current policy on a proper footing, but also to learn from the experience of this period both from the point of view of the local authority (in terms of planning, transport, environmental health, legal services, etc) and that of neighbours who have suffered from projects that have lasted several years and have severely affected the quiet enjoyment of their homes. Our expectations are, therefore, even higher than those of the Planning Department – we have to live with the result of the Council's decisions.

Sustainability

It has been suggested that these developments are sustainable development because they have economic benefits both to employment during construction and to the value of the properties. This is undermined by the speculative nature of many of the schemes where the property remains unoccupied after completion and is later sold to non-residents as an investment rather than as a primary residence. No additional households are housed, indeed a common outcome is that the properties remain effectively unoccupied – withdrawn from the stock of properties for use as primary residences. And no additional bedrooms are provided – usually only swimming pools, saunas, gyms and cinemas.

However, sustainable development has three strands – economic, environmental and social. Basement development is inherently unsustainable in environmental terms, especially in terms of carbon emissions resulting from the disposal of demolition and excavation waste, pouring of large quantities of concrete and the additional heating and cooling required for such deep basements. These have been ignored until now, but even the awareness raised about London Plan policies may not influence the assessment.

The Society welcomes the references in paras 34.3.53, 34.3.56 and 34.3.69 and footnote 4 to some of the broader sustainability issues, such as carbon emissions, but is concerned that there is no guidance as to how these issues should be assessed, nor is there a direct policy reference other than CL7 (j). This could be covered by the forthcoming SPD on Basements, but there are no direct policy hooks.

The social impact of such developments may include the benefits of the additional amenities (if used), but also the suffering of neighbours during projects that may last up to three years in some cases. The existing safeguards, such as the noise regulations are inappropriate and seldom enforced, and the construction traffic management plans do not comply with the Council's own "policy" in the Transport SPD. Para 34.3.70 and CL7 (l) are not sufficient.

Flood risk, SUDS and drainage

If basements are to be built below gardens, there is a need to secure sustainable urban drainage systems (SUDS) which will enable rainwater to be directed toward a soakaway rather than to the sewer system. To secure sufficient permeability existing impermeable surfaces will need to be removed and, if replaced, permeable surfaces be created.

A policy is needed to specify that gardens must be permeable – there should be no “right” to replace or retain impermeable surfaces.

The policy of SUDs (CL7 (I)) and the reasoned justification (para 34.3.68) are welcomed but do not go far enough – if there were basements under 50% of the garden then **all** runoff from the basement should go into a SUDs/soakaway and none should go to the sewers. **The Society therefore has reservations about its soundness.**

Comments on the new policy

The new section 34.3 on basements consists of a reasoned justification – paragraphs 34.3.56 to 34.3.83 – and Policy CL7: Basements. The Society has comments on and is proposing changes to these two parts.

Reasoned Justification

34.3.46: **The Society recognises the need for a clear definition of basement, but strongly disagrees with the Council’s definition that unless a lower ground floor/ basement is “completely below the prevailing ground of the back gardens within the immediate area” it cannot be regarded as an existing basement.**

The Society proposes an alternative definition that “the floor of any storey which is 50% or more below the predominant garden level should be designated as a basement for the purpose of this policy”

A traditional basement is normally created by excavation beneath the footprint of a building. The natural fall of the site determines its depth, which is usually beneath ground level to the front, and beneath garden level to the rear. The construction of the basement is therefore an integral element of the building's structure. A traditional basement, therefore, is usually somewhere between ground level in the street at the front of the building and the level of the garden at the back. This is a function of the method of construction.

34.3.47 The Society considers that the first sentence should be more neutral in its description by rewriting the first line as:

“Basements are a way of increasing the space in homes and commercial buildings.”

34.3.48: The first sentence is a gross understatement of the impact on neighbours. Rewrite first sentence:

“In recent years basement developments have had a major impact on the lives nearby residents.”

Line 3: after “noise” add “, vibration, dust”

At the end of line 3 add: “residents’ parking suspensions,”

34.3.49 The Society **strongly supports** this assessment.

- 34.3.50: The Society **strongly supports** this assessment
- 34.3.51: The Society **strongly supports** limiting basements to one additional level, but does not agree that basement excavation of up to half of the garden are acceptable. We strongly urge the adoption of a policy of limiting basements to the footprint of the building (except for listed buildings). This has already been agreed in our neighbouring borough of Hammersmith and Fulham.
- 34.3.52: The Society **strongly supports** the Council's reasoning for limiting the extent and duration of construction by reducing the volume of soil to be excavated, but consider that when the issue of carbon emissions as a result of large-scale concrete pouring and subsequent use are considered, we consider that the environmental aspects of sustainability have not been given sufficient weight. The Society considers that the evidence by Eight Associates on the Life Cycle Analysis underlines the inherent unsustainability of basement developments and proposes that this is more explicitly recognised in the reasoned justification to explain the Council's proposals to limit the scale of basement developments.
- 34.3.54: A **major omission** in this paragraph is the size of gardens. The smaller the garden the less the scope for a basement. If the restriction to being under the footprint is not accepted, we would propose a minimum size for a garden to be retained without any basement underneath, sufficient to secure drainage, retain trees and provide space for planting.
- 34.3.55: If development under gardens were accepted, the Society agrees that the unexcavated are of garden should be in a single area to promote **sustainable** drainage **and be capable of supporting mature trees.**
- The Society **proposes** after "better drainage" in line 2 adding "though SUDS, mature trees to be supported"
- 34.3.56: **The Society strongly supports a precautionary approach**, but consider that greater reasoning should be provided, such as elaborating the sources of carbon emissions. (see section on Sustainability above)
- 34.3.57: **The Society strongly supports limiting the basement development to a single storey**, but consider that a floor-to-ceiling height of 4m is excessive – in many smaller properties even

3m would be exceptional. We are concerned that 4m may be seen as a minimum entitlement.

34.3.58 The Society recognises that there will be some exceptions – usually very large developments.

34.3.59: The Society **endorses** this – but would point out the problem referred to in relation to para 34.3.46 above.

34.3.60: **The Society strongly supports this policy on retaining trees** – but in the way that it is written it fails to make the strongest point – their contribution to the townscape and amenity of the immediate area.

We **propose** that after “Borough,” in line 2 “townscape and amenity of the local area,” be added.

34.3.61: **This is far too cryptic** – it should specifically mention listed buildings and conservation areas. Hiding this in a footnote will be lost on both residents and developers.

Insert after “heritage assets” in line 1 “, especially listed buildings, conservation areas and sites of archaeological interest,”

34.3.62: **The Society strongly supports the reasoning for and policy to resist basements under listed buildings.**

34.3.63: **The Society agrees that protecting the foundations is strong reason for resisting the development of basements beneath listed buildings and for resisting them under the gardens of such buildings**, except where there is a large garden.

The issue of limited foundations applies to a large amount of Victorian housing stock, not just listed buildings, especially in terraces where the impact demolition and excavation can affect more than just the immediate neighbours. This needs to be recognised.

The Society is also concerned about the potential adverse impact of a basement under the garden of a listed building due to roof lights or other means of providing natural light and ventilation or mechanical ventilation, much of which is often not covered in the applications.

- 34.3.67: **The Society supports minimising the visual impact of lightwells, roof lights, railings, steps, emergency accesses, plant and other externally-visible elements.**
- 34.3.68: **The Society considers that the Council’s policy should change from attenuating the run-off from the garden to the sewers and instead seeking to direct the run-off to the SUDS, to benefit trees, as well as “shrub and other garden planting”.** The text should be changed:

Line 5: Before “shrub” add “trees,”

- 34.3.69: **The Society strongly supports the requirement to retrofit the building as a minor contribution to offset the carbon emissions intensive process of developing basements.** We would, however, prefer to reduce the scale of basement developments to significantly reduce the innately unsustainable nature of basement developments. Both the London Plan policies and the evidence provided by Eight Associates on life-cycle analysis support this.

- 34.3.70: **The Society is very concerned** that the requirements for minimising the impacts should be given more status so that they are taken more seriously both by being in the Core Strategy and in the assessment of the building process proposed for the development. This will mean, for example, that the requirement for a construction traffic management plan and its submission as part of the application is a part of the policy in the plan and that there will be a presumption against storing skips, materials and equipment on the street. The Society welcomes the last sentence, but considers that the lead policy on this needs to be in the plan, probably in Chapter 32: Better Travel Choices.

The Society is concerned that the Council cannot envisage any circumstances where access difficulties might inhibit basement development up to the point of actively condoning heavy lorries driving on the footway, which is illegal under the Highways Acts.

The Society objects strongly to the reference to “permitted levels” of noise and other nuisances as these national standards are:

- desperately out of date – the noise standards were proposed in the 1970s and were to have been replaced by a new British Standard; and

- not appropriate to the high-density conditions in the Borough where neighbours' properties immediately adjoin the development.

The Society proposes changing “kept to the permitted levels” in lines 4/5 to “kept well within the permitted maximum levels” and adding after “taking” in line 5 “local conditions and” before “cumulative effects”

The Society also proposes that “or” in line 7 should be changed to “and only” to identify that the presumption is that keeping skips, materials and equipment should be kept off the highway (including the pavement).

34.3.71: **The Society is concerned** that Building Regulations and the Party Wall Act do not provide sufficient control.

34.3.72: The Society **welcomes** the Council’s recognition of the need to install “a positively pumped device to handle surface water flood risk.

Policy CL7: Basements

The Society is concerned that this policy should take a precautionary approach and avoid giving the impression that it is defining “minimum entitlements” rather specifying the constraints.

CL7 (a) The Society whilst welcoming a significant reduction in the amount of the garden that can be built over, considers that allowing up to 50% of the garden to have below ground development is still far too much and **strongly supports limiting basements to the footprint of the building**, as has recently been adopted in the London Borough of Hammersmith and Fulham.

CL7 (b): **The Society strongly supports the proposed limit of one storey, subject to comments above about the height of a storey – this policy is sound**

CL7(c): **The Society strongly supports this policy of not building under an existing basement – this is sound, subject to agreeing the definition of a basement.**

CL7(d): **The Society strongly supports this policy to protect trees and will encourage its firm application – ie it should be a strong reason for refusal, such as at 15 Mary Place and at 5 Albert Place. This policy is sound**

- CL7 (e): **The Society considers that this is too cryptic - few people know what “heritage assets” are – the policy should specifically mention listed buildings and conservation areas in the policy. Subject to further clarification, this policy is sound.**
- CL7 (f) **The Society strongly supports the Council’s policy for no basements under or in the garden of listed buildings. This policy is sound and well justified.**
- CL7 (g): The Society **strongly supports** this policy.
- CL7 (h) The Society **supports** this policy.
- CL7 (i) **The Society strongly supports the requirement for SUDs, but subject to all rainwater run-off due to basement goes to SUDs,**
- CL7(j) **The Society strongly supports the Council’s requirement for any building with a basement to be adapted to reduce energy and water consumption and waste production. This policy is sound as far as it goes, but needs to consider wider sustainability issues.**
- CL7(k) **The Society strongly supports this policy to minimise the impact of developments,** but propose that the policy should recognise the impact of parking stress. In line 3, add “parking stress and” before “traffic congestion”.
- CL7(l) **The Society strongly supports this policy to limit the noise, vibration and dust from such developments,** although it needs amending to recognise that limits devised by a Committee of the building industry in the 1970s for general application are inappropriate in 2014 and in a high density area where residents immediately adjoin the building site. We propose deleting “to” at the end of line 1 and substituting “well within” permitted levels and adding at the end “taking into account the cumulative impact if several developments are being undertaken at the same time.”
- CL7(m) **The Society strongly supports this policy with regard to minimising damage and safeguarding structural stability,** subject to deleting the words “be designed to” at the beginning.
- CL7(n) The Society **strongly supports** this policy to ensure that basements are protected by suitable pumped devices. **This policy is sound.**

Overall Assessment

The Society considers that the Council has produced a well-researched, carefully considered policy with reasoned justification which the Society considers to be sound and well justified.

Nevertheless the Society would press for:

- **basements to be limited further to the footprint of the building;**
- **the definition of a basement to be redefined; and**
- **all rainwater runoff should go to SUDs rather than to sewers.**